

Message Text

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FM AMEMBASSY BERN
TO SECSTATE WASHDC 5554
INFO AMEMBASSY BONN
AMEMBASSY BRUSSELS
USMISSION GENEVA
AMEMBASSY LONDON
AMCONSUL MILAN
AMEMBASSY PARIS
AMEMBASSY ROME
AMCONSUL ZURICH POUCH

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PASS TREAS AND FRB

USMTN ALSO FOR MISSION

USOECD ALSO FOR EMBASSY

EO 11652: NA
TAGS: EFIN SZ
SUBJ: CLARIFICATIONS OF BANKS' AGREEMENT TO IDENTIFY CLIENTS

REF: 77 BERN 2520 AND A-81, JUN 10, 1977

1. SUMMARY: IN JUN 1977 SWISS BANKERS' ASSN (SBA)
AND BANKS DOMICILED IN SWITZERLAND AGREED WITH SWISS
NATL BANK (SNB) TO ENSURE BANKS PROPERLY IDENTIFY
BENEFICIAL OWNER OF DEPOSITS SO THAT INCORRECT USE
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OF BANK SECRECY WOULD NOT BE USED TO CONCEAL FUNDS
ACQUIRED BY PUNISHABLE ACTS OR ASSIST CAPITAL FLIGHT
AND TAX EVASION. PRESS HAS PUBLISHED ELEMENTS OF
RECENT "JOINT COMMENTARY OF SNB AND SBA ON AGREEMENT
REGARDING BANK SECRECY" INTENDED TO CLARIFY AMBIGUITIES
IN AGREEMENT TEXT WHICH CONSISTS OF GENERAL PRINCIPLES
SUBJECT TO DIVERSE INTERPRETATION. ALL BANKS IN SWITZERLAND

HAVE SIGNED THE AGREEMENT. END SUMMARY.

2. GENERAL: FOREIGN BRANCHES OF SWISS BANKS ARE NOT COVERED BY THE AGREEMENT. MAJOR CLARIFICATION IS THAT BANKS ARE NOT REQUIRED TO EXAMINE IDENTITY OF CLIENTS WHO OPEN SAVINGS ACCTS BY NAME, OR INVESTMENT AND SHORT-TO-MEDIUM TERM DEPOSIT ACCTS, WHEN INITIAL DEPOSIT IS UNDER SF 100,000. BANKERS HAVE NO RIGHT TO GIVE ANY INDICATION (I.E., NAME AND ADDRESS) OF PERSONS WHO ORGANIZE FLIGHT CAPITAL OR ASSIST IT. FOLLOWING CLARIFICATIONS ARE KEYED TO AGREEMENT ARTICLES.

3. CHAPTER III, ARTICLE 3: ASCERTAINING IDENTITY OF BENEFICIAL OWNER OF FUNDS: A) BANKS ARE TO ASK FOR IDENTITY DOCUMENT OF CLIENTS RESIDENT IN SWITZERLAND WHO APPEAR IN PERSON. EXCHANGE OF LETTERS WILL PERMIT VERIFICATION OF DOMICILE FOR CLIENTS COMMUNICATING BY MAIL. CLIENTS DOMICILED ABROAD WHO APPEAR IN PERSON CAN IDENTIFY THEMSELVES BY OFFICIAL IDENTITY DOCUMENT OR BY WRITTEN RECOMMENDATION FROM FOREIGN BRANCH OF THE BANK, CORRESPONDENT OF THE BANK ABROAD, OR TRUSTWORTHY AND WELL-KNOWN BANK CLIENT. RECOMMENDATIONS BY FOREIGN BANK BRANCHES ARE VALID ONLY IF BRANCH HAS EXAMINED CLIENT'S IDENTITY AS REQUIRED BY THE AGREEMENT. COMPANIES IDENTIFY THEMSELVES BY PROVIDING COPY OF EXTRACT FROM

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COMMERCIAL REGISTER IF THEY ARE REGISTERED (WHICH SHOWS NAMES OF PERSONS WHO CONTROL THE COMPANY) OR BY EXCHANGE OF CORRESPONDENCE IN OTHER CASES.

B) BANKS MAY PRESUME THOSE WHO OPEN AN ACCT ARE OWNERS OF FUNDS IN QUESTION. HOWEVER, EXISTENCE OF UNUSUAL CIRCUMSTANCES DESTROYS THIS PRESUMPTION, E.G., IF SOMEONE OPENS ACCT WITH AMOUNTS DISPROPORTIONATE TO THEIR PERSONAL FINANCIAL SITUATION.

4. ARTICLE 4: BANKS MAY NOT UNDERTAKE TRANSACTIONS WITH FUNDS WHICH THEY KNOW OR SHOULD BE AWARE HAVE DOUBTFUL ORIGIN. THIS ALSO APPLIES TO TELLER WINDOW OPERATIONS. BANKS MUST SEVER ALL RELATIONS WITH CLIENT AS SOON AS IT HAS CONCRETE INFORMATION CONCERNING PUNISHABLE ACTS.

5. ARTICLE 5: PROFESSIONAL SECRETS. WHENEVER CLIENT ACTS THROUGH INTERMEDIARY, LATTER MUST SIGN

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STATEMENT CONFIRMING THAT BENEFICIAL OWNER IS
KNOWN TO HIM AND THAT NO OPERATIONS ARE INVOLVED
WHICH VIOLATE THE AGREEMENT. HOWEVER, LAWYERS,
NOTARIES, FIDUCIARIES AND ADMINISTRATORS OF ESTATES
CAN BE EXEMPTED FROM SIGNING SUCH STATEMENT IF THEY
ARE TRUSTWORTHY.

6. CHAPTER IV: AIDING AND ABETTING:

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A) ARTICLE 8, CAPITAL FLIGHT: BANKS MUST NOT
ACTIVELY ASSIST SUCH OPERATIONS. HOWEVER, CONTACTS

WITH CLIENTS BY VISITS ABROAD DO NOT VIOLATE THE AGREEMENT WHEN BANKER NEITHER ACCEPTS FUNDS, TRANSFER OF WHICH IS FOBIDDEN, NOR PROVIDES ADVICE FOR ILLEGAL TRANSFER.

B) ARTICLE 9: TAX EVASION: BANKS MUST NOT SUPPORT ATTEMPTS TO DECEIVE SWISS OR FOREIGN OFFICIALS, PARTICULARLY TAX AUTHORITIES, BY CERTIFYING INCOMPLETE DOCUMENTS WHICH WOULD MISLEAD; E.G., WHEN ONE OR MORE ACCTS IN A STATEMENT OR ENTRIES IN AN ACCT EXTRACT ARE OMITTED, OR BY INDICATING DATES AND AMOUNTS WHICH DO NOT CONFORM TO REALITY

7. CHAPTER VI, ARTICLE II: SCREENING OF ACCTS EXISTING PRIOR TO AGREEMENT: VERIFICATION THAT EXISTING ACCTS MEET AGREEMENT REQUIREMENTS IS REQUIRED IF TOTAL ACCTS OR DEPOSITS EXCEED SF 1 MILLION, BUT NOT IF THEY ARE SPREAD OVER SEVERAL BRANCHES.

8. PRESS COMMENT STRESSED MAJOR IMPACT OF AGREEMENT IS THAT WHEREAS UNAUTHORIZED TRANSFER OF FOREX FROM COUNTRY WHICH PROHIBITS OR LIMITS SUCH TRANSFERS BY ITS CITIZENS IS NOT PUNISHABLE OFFENSE UNDER SWISS LAW, AGREEMENT COMMITS BANKS NOT TO ACCEPT SUCH FUNDS. HOWEVER, AGREEMENT DOES NOT MODIFY SWISS BANK SECRECY. IT DOES NOT ATTEMPT TO INCORPORATE FOREIGN ECONOMIC, FISCAL AND FOREX LAWS INTO SWISS LAW BECAUSE THAT WOULD DENY SWISS BANKS PROTECTION OF SECRECY FROM FOREIGN INVESTIGATIONS OF UNLAWFUL TRANSFERRING OF FUNDS TO SWITZERLAND.
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ADDITIONALLY, BANKS MUST KEEP CONFIDENTIAL AND NOT PROVIDE IDENTITY OF THEIR CLIENTS TO SNB. THAT INFORMATION MAY BE EXAMINED BY BANKS' INTERNAL AUDITING UNITS WHICH MUST MAINTAIN SECRECY. IN CASES WHERE ARBITRATION COMMISSION INVOLVED, SUCH COMMISSION IS BOUND BY BANK SECRECY.

9. BANKERS TOLD PRESS DETERMINATION OF REAL BENEFICIAL OWNER WILL BE MOST DELICATE TASK IMPOSED BY AGREEMENT. BANKS ARE REQUIRED TO TAKE NOTE OF DOUBTFUL CASES OF OWNERSHIP, E.G., WHEN CLIENT GIVES POWER OF ATTORNEY TO THIRD PARTY WITH WHOM THERE IS CLEARLY NO RELATIONSHIP. BANKERS FEEL LOOPHOLE FOR PROFESSIONAL SECRECY IS MORE APPARENT THAN REAL. BEARER OF FOREIGN CERTIFICATE OF ACCOUNTANCY MAY TAKE ADVANTAGE OF THIS LOOPHOLE, BUT SUCH PERSON ACTING ON BEHALF OF "DOMICILE COMPANY" (THOSE WITH

NO MANUFACTURING IN SWITZERLAND BUT REGISTERED HERE)
REMAINS SUBJECT TO AGREEMENT PROVISIONS AND MUST
PROVIDE NAMES OF PERSONS WHO CONTROL THE COMPANY.
HOWEVER, BANKERS SEE POSSIBILITY THIS LOOPHOLE COULD LEAD TO
CREATION OF BANKS AT LAWYERS' OFFICES.
WARNER

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